

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMOTHY K. WILSON and U.S. POSTAL SERVICE,
POST OFFICE, Evanston, Ill.

*Docket No. 96-544; Submitted on the Record;
Issued March 10, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established a permanent impairment entitling him to a schedule award under 5 U.S.C. § 8107.

The Board has reviewed the case record and finds that appellant has not established entitlement to a schedule award in this case.

On September 12, 1992 appellant, then a 40-year-old letter carrier, filed a claim alleging that he injured his back in the course of his federal employment. Following development of the evidence, the Office of Workers' Compensation Programs accepted the claim for lumbosacral strain, cervical and lumbosacral radiculopathy and central disc herniation, C5-6, C6-7 and paid appropriate compensation benefits.

On December 21, 1994 appellant requested a schedule award. By decision dated September 27, 1995, the Office denied appellant's claim for a schedule award.

The schedule award provision of the Federal Employees' Compensation Act and its implementing regulations provide for compensation to employees sustaining impairment from loss, or loss of use of, specified members of the body.¹ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determinations is a matter which rests in the sound discretion of the Office. As a matter of administrative practice and to ensure consistent results to all claimants, the Office has adopted and the Board has approved of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.

In the present case, Dr. Charles B. Joseph, a Board-certified orthopedic surgeon, opined on June 21, 1995 that there was evidence of mild central disc herniation and minor, static

¹ 5 U.S.C. § 8107; 20 C.F.R. § 10.304.

shoulder tendinitis. On April 22, 1995 appellant's treating physician, Dr. Julieta Joson-Luna, a general practitioner, opined on April 22, 1995 that appellant had disabling neck pain and weakness in both arms. Dr. Joson-Luna opined on August 20, 1994 that appellant had cervical disc syndrome resulting in a radiculopathy which affected cervical spine motion and caused tenderness in the intrascapular region of the shoulder. On April 19, 1995 Dr. James W. Milgram, a Board-certified orthopedic surgeon, opined that appellant only suffered a cervical sprain and that his shoulder problems should resolve within three months.

As noted above, schedule awards are limited to permanent impairment of specified members of the body. The Board has held:

“A schedule award is not payable for the loss or loss of use, of a part of the body not specifically enumerated in the Act. Neither the Act nor its regulations provide for a schedule award for impairment to the back or to the body as a whole. Furthermore, the back is specifically excluded from the definition of ‘organ’ under the Act.”²

Both Drs. Joseph and Joson-Luna described impairments relevant to appellant's cervical spine. Appellant, however, cannot receive a schedule award for impairment to his cervical spine.³ With respect to impairments other than the cervical spine, Dr. Milgram suggested that any problems should resolve within three months, Dr. Joseph indicated that appellant's shoulder problems were “static,” and Dr. Joson-Luna indicated that appellant had radiculopathy and weakness in both arms. These descriptions are not sufficient to establish a permanent impairment of the upper extremity. Consequently, the record is devoid of probative evidence providing a description of a permanent impairment to the upper extremities or any other enumerated part of the body.

Accordingly, the Board finds that appellant has not established entitlement to a schedule award under 5 U.S.C. § 8107 in this case.

² *James E. Mills*, 43 ECAB 215 (1991); *James E. Jenkins*, 39 ECAB 860 (1988).

³ *Id.*

The decision of the Office of Workers' Compensation Programs dated September 27, 1995 is affirmed.

Dated, Washington, D.C.
March 10, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member